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COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Fifteenth session

SUMMARY RECORD OF THE 39th MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 26 November 1996, at 10 a.m.

Chairperson: Mr. ALSTON

CONTENTS

CONSIDERATION OF REPORTS:

(a) REPORTS SUBMITTED BY STATES PARTIES IN ACCORDANCE WITH ARTICLES 16 AND 17 OF THE COVENANT (continued)

Third periodic report of the United Kingdom of Great Britain and Northern Ireland (Hong Kong)

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The meeting was called to order at 10.10 a.m.

CONSIDERATION OF REPORTS:

(a) REPORTS SUBMITTED BY STATES PARTIES IN ACCORDANCE WITH ARTICLES 16 AND 17 OF THE COVENANT (agenda item 4) (continued)

Third periodic report of the United Kingdom of Great Britain and Northern Ireland (Hong Kong) (E/1994/104/Add.10; E/C.12/Q/UKHK.1; E/C.12/Q/HON.1; HRI/CORE/1/Add.62, annex VII; E/C.12/CA.31)

1. At the invitation of the Chairperson, Mr. Steel, Mr. Fung, Mr. Wong, Mr. Croft, Mr. Sherwin, Mr. Shiu, Ms. Chiu, Mr. Reynalds, Sir John Ramsden, Ms. Foulds and Mr. Wells (United Kingdom) took places at the Committee table.

2. The CHAIRPERSON welcomed the United Kingdom delegation and invited it to introduce the third periodic report in respect of Hong Kong (E/1994/104/Add.10).

3. Mr. STEEL (United Kingdom), after presenting his delegation, said that the United Kingdom attached great importance to proceedings before the Committee and to the opportunity they provided for an open and constructive dialogue helpful to it in its endeavours to give the provisions of the Covenant the fullest possible implementation in Hong Kong.

4. On 1 July 1997 Hong Kong would be returned to Chinese sovereignty in accordance with the Sino-British Joint Declaration on the Question of Hong Kong, in which China had pledged that Hong Kong would become a Special Administrative Region of China, preserving its own lifestyle and freedoms and enjoying a high degree of autonomy. The Joint Declaration contained a number of fundamental guarantees of particular relevance to the Covenant.

5. The fourth paragraph of Section XIII of Annex I to the Joint Declaration expressly stated that "the provisions of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights as applied to Hong Kong shall remain in force". In addition to that basic provision, there were also a number of more detailed provisions of special relevance to the Covenant. For example, in the same Section XIII, it was stated that "the Hong Kong Special Administrative Region Government shall protect the rights and freedoms of inhabitants and other persons in the Hong Kong Special Administrative Region according to law". That Government would furthermore "maintain the rights and freedoms as provided for by the laws previously in force in Hong Kong, including freedom of the person, of speech, of the press, of assembly, of association, to form and join trade unions, of correspondence, of travel, of movement, of strike, of demonstration, of choice of occupation, of academic research, of belief, inviolability of the home, the freedom to marry and the right to raise a family freely".

6. Section X of Annex I contained some very detailed provisions about education. It stated that "the Hong Kong Special Administrative Region shall maintain the educational system previously practised in Hong Kong. The Hong Kong Special Administrative Region Government shall on its own decide

policies in the fields of culture, education, science and technology, including policies regarding the educational system and its administration, the language of instruction, the allocation of funds, the examination system, the system of academic awards and the recognition of educational and technological qualifications. Institutions of all kinds, including those run by religious and community organizations, may retain their autonomy. They may continue to recruit staff and use teaching materials from outside the Hong Kong Special Administrative Region. Students shall enjoy freedom of choice of education and freedom to pursue their education outside the Hong Kong Special Administrative Region".

7. Section XIII of Annex I also contained some very important provisions primarily concerned with freedom of religion but bearing directly on the right to education and the rights to health and social welfare. All those provisions of the Joint Declaration, which themselves embodied formal legal obligations assumed by the Chinese Government, were reflected in the Basic Law enacted in 1990 by the National People's Congress of China to give effect to China's obligations under the Joint Declaration after the transfer of sovereignty.

8. The final phases of preparation for the transfer of sovereignty were now well advanced. The Chief Executive (designate) of the Hong Kong Special Administrative Region would be chosen on 11 December, and that development should bring a welcome end to some of the uncertainty surrounding the transition. China had also announced plans for choosing a provisional legislature to take the place of the present Legislative Council on 1 July 1997. The firm view of the United Kingdom Government was that such a step was neither necessary nor called for, and that the members of the present Legislative Council should be allowed to serve their natural four-year term. Neither the Joint Declaration nor the Basic Law made any mention whatever of a provisional legislature.

9. In the Joint Declaration, China had made an explicit and formal commitment that the provisions of both International Covenants on Human Rights would remain in force in the Hong Kong Special Administrative Region. It was also the firm view of the United Kingdom Government, and of the Human Rights Committee, that such a commitment included the obligation, under article 16 of the International Covenant on Economic, Social and Cultural Rights and article 40 of the International Covenant on Civil and Political Rights, to ensure that reports in respect of the Hong Kong Special Administrative Region continued to be submitted to the two respective Committees in accordance with the Covenants and with the guidelines established for that purpose. Such reports would offer the most effective assurance and provide the clearest demonstration that the provisions of the Covenants were indeed being implemented in Hong Kong. China's current position was that, as a country which was still not a party to the Covenant, it could not have an obligation to report under it in respect of the Hong Kong Special Administrative Region. His Government would therefore continue to try to persuade the Chinese Government to see the position in a different light.

10. There was, of course, a very simple way out of the situation - namely, accession by China to both Covenants. The United Kingdom Government had strongly encouraged China to do that and was sure that it was not alone in

offering such encouragement. However, the important point was that reports should continue to be received. His Government was sure that both Committees concerned would show themselves to be flexible with regard to the modalities of reporting and hoped that the Chinese Government would also adopt a flexible and generous approach. If it did so it would remove a potential obstacle to the smooth and successful establishment of the Hong Kong Special Administrative Region and to its long-term future as a place where fundamental human rights were fully and visibly respected.

11. Mr. FUNG (United Kingdom) said that the presence of a strong team of Hong Kong Government officials as part of the United Kingdom delegation, of members of the Hong Kong Legislative Council and of the Hong Kong media was testimony to the importance attached to the Covenant in Hong Kong. Since its previous contact with the Committee in November 1994, the Hong Kong Government had continued to pursue a wide range of initiatives to secure and improve the enjoyment of economic, social and cultural rights at an exceptional time in the territory's history.

12. On 1 July 1997 Hong Kong would become a Special Administrative Region of China, preserving its own lifestyles and freedoms, and with its own Chief Executive, executive authorities, legislature and judiciary operating its own legal system based on the common law and enjoying full monetary and fiscal autonomy subject to important conditions and safeguards. The Hong Kong Government was working hard to fulfil its part in ensuring a successful transition and was committed to cooperating with the Preparatory Committee and the Chief Executive (designate), provided that the arrangements made were fully consistent with the Joint Declaration and the Basic Law and in the interests of Hong Kong, that the authority and credibility of the Hong Kong Government were not undermined, that the morale and confidence of the civil service were not affected, and that civil servants were not subjected to conflicting loyalties.

13. The Hong Kong Government was furthermore determined to do all it could to ensure that Hong Kong continued to prosper as a Special Administrative Region under Chinese sovereignty and to enjoy the high degree of autonomy promised in the Joint Declaration and enshrined in the Basic Law. To bring about a successful transfer of government, arrangements had been agreed for the continued employment of civil servants and the transfer of defence responsibilities. Important work nevertheless remained to be done. The programme for the localization of laws must be brought to a satisfactory conclusion and it was necessary to determine how to implement the provisions of the Basic Law concerning the right of abode in Hong Kong after 30 June 1997.

14. Moreover, important questions regarding the future of the legislature, the continued reporting on Hong Kong to the present Committee, and Hong Kong's Bill of Rights Ordinance remained to be resolved. The current Legislative Council had been fairly and openly elected through arrangements consistent with the Joint Declaration and the Basic Law. The Hong Kong Government did not accept that there was any need for a provisional legislature as proposed by China. The question of the continued submission of reports to the present Committee and to the Human Rights Committee after 30 June 1997 was still a source of great anxiety for the people of Hong Kong, who had come to regard

those reports as benchmarks against which to measure progress in the implementation of human rights safeguards. Notwithstanding the challenges of the final period before the transfer of sovereignty, the Hong Kong Government continued to make every endeavour to realize the economic, social and cultural rights contained in the Covenant.

15. The Hong Kong economy continued to prosper. Hong Kong was the eighth largest trading economy and the fifth largest banking centre in the world. Over the past decade, the average GDP growth rate had been 6.5 per cent. In 1995, per capita GDP had reached US$ 23,300 and was expected to rise to US$ 25,100 in 1996. The Hong Kong Government's approach to the economy was one of minimum executive interference and maximum support. Its main role was to provide the necessary infrastructure and a sound and impartial legal and administrative framework conducive to economic growth and prosperity. Most importantly, it made use of the wealth generated to meet the rising standards of public service that the people of Hong Kong expected and required in areas such as housing, health care, welfare, education and cultural life.

16. The steps being taken in each of those areas were described in the report before the Committee and in the responses to the list of issues. Significant recent developments included the implementation, in April 1996, of a comprehensive package of measures to enhance the assistance provided under Hong Kong's social security system so that it continued to meet the basic and special needs of financially vulnerable people; additional funding to the Employees' Retraining Board to facilitate the provision of retraining programmes for workers affected by the economic restructuring process; the reduction, over the past year, of the unemployment rate from a peak figure of 3.6 per cent to a more customary level of 2.6 per cent; the appointment of Hong Kong's first Privacy Commissioner for Personal Data; the establishment, following the enactment of the Sex Discrimination and Disability Discrimination Ordinances, of the Equal Opportunities Commission and the extension to Hong Kong of the Convention on the Elimination of All Forms of Discrimination against Women, which China had agreed to continue to apply to Hong Kong after 30 June 1997.

17. Nevertheless, Hong Kong had its problems. Two of the most critical challenges were the interrelated issues of a rising population and the demand for housing. Over the past 10 years, Hong Kong's population had increased from 5.5 million to 6.2 million. The growth had included many people - currently some 55,000 legal immigrants a year - from China, who needed help in order to integrate into Hong Kong society. At the same time, some 170,000 households, many of them long-term residents, were estimated to be inadequately housed. One of the Hong Kong Government's key objectives was to help all households to gain access to adequate and affordable housing. Its extensive public housing programme had helped to reduce the number of inadequately housed families by 25 per cent over the past five years, and it would continue to make every effort to address that problem and to give full effect to the relevant provisions of the Covenant in Hong Kong. Moreover, the Hong Kong Government earnestly hoped that satisfactory arrangements would be made to enable the Committee to be updated on the results of those efforts in the years to come.

18. The CHAIRPERSON invited the Committee to proceed to consider the report on the basis of the list of issues (E/C.12/Q/UKHK.1). The case of Hong Kong was unusual and, in addition to issues relating to the existing situation, there were many others concerning the potential future framework that had not been taken up specifically in the Committee's list of issues. He therefore suggested that the latter should be dealt with at the beginning, in relation to section 1 on general information. Overall, at least as much attention had to be devoted to the current situation of economic, social and cultural rights as to the broader legal and related questions concerning the future status of the Covenant in Hong Kong.

19. Mr. SIMMA, Country Rapporteur, said that he had been very impressed by the visit which he and Mrs. Bonoan-Dandan, the Committee's other country rapporteur, had made to Hong Kong in late September and early October 1996. The civil service was efficient, the non-governmental organizations (NGOs) were vibrant, and the dialogue between the Government and the governed was frank and open.

20. With regard to the reporting obligation in respect of Hong Kong, several interpretations of paragraph 156 of the Joint Declaration were possible. A first interpretation was that China had a minimum obligation to guarantee the implementation in Hong Kong of the guarantees contained in the two International Covenants. A second possible interpretation was that China also had an obligation to "step into the United Kingdom's shoes" and assume its international obligations vis-à-vis other States parties. The concluding observations which the Committee had drawn up in 1994 were compatible with both interpretations. In 1995, the Human Rights Committee had expressly supported the second interpretation on the grounds of State succession and of the contents of the Joint Declaration. Professor Burns had, however, offered a third interpretation of paragraph 156, which - according to him - could be understood as creating an obligation on both parties to the Joint Declaration to make every effort to bring about a situation that would permit the submission of reports.

21. Both the present Committee and the Human Rights Committee had encouraged China to report, and as far as he was aware no State party to either of the two International Covenants had made the slightest objection. It could therefore be concluded that there was no legal obstacle to prevent China from reporting after 1 July 1997. The best way to achieve that would be for the Hong Kong Special Administrative Region Government to submit a report under the aegis of China. If China decided not to report, there would be no legal obstacle to prevent the Hong Kong Special Administrative Region Government from reporting by itself, as an international legal entity having a general capacity to engage in treaty relations and to take part in the work of international organizations in conformity with the Joint Declaration. The Committee should place on record its encouragement of that procedure. However, the best solution would obviously be for China to become a party to the International Covenant on Economic, Social and Cultural Rights.

22. The Committee would do well to request a "wrap-up" report from the United Kingdom covering events up to 30 June 1997, with emphasis on measures taken to ensure that human rights would subsequently be respected, and giving a picture of the development of human rights in Hong Kong since 1842. The

Committee should also strongly encourage Hong Kong non-governmental organizations (NGOs) to continue to take part in the reporting process.

23. With regard to the follow-up to the Committee's consideration of the United Kingdom's previous report in respect of Hong Kong, Professor Burns had very aptly stated that during the hearings in 1994 the Hong Kong Government had sought, politely and helpfully, to respond to the Committee's questions and concerns, but only on a formal and procedural level. However, beneath its professed commitment to the spirit of the Covenant, there had been a fierce intransigence and unwillingness even to consider the possibility that there might be some other way of doing things, that its policies might fall short of the standards set by the Covenant in some important areas, or that the assessment of an appropriate body of international experts might cause the Government to re-examine some of its existing positions.

24. The week following the Committee's consideration of the second periodic report, a Hong Kong newspaper had quoted Mr. Fung as saying that the Committee's conclusions should not be taken as final since most members of the Committee had not been to Hong Kong. Two members of the Committee had since taken up invitations to visit the Territory. The Solicitor General had also been reported as saying that after a mere two days of questioning the Committee could hardly claim an in-depth knowledge of the situation. Upon his return from Hong Kong, he had thus made a point of studying the Committee's concluding observations of 1994 and had found that, although some additions might have been useful, not a single word written in 1994 required revision.

25. Mrs. JIMENEZ BUTRAGUEÑO observed that Hong Kong's situation was privileged. China would be inheriting a thriving economy, a fact it could not fail to appreciate. She endorsed the comments made by the previous speaker and hoped eventually to visit Hong Kong herself. She applauded the dynamism of Hong Kong's NGOs. Their participation emphasized the importance the United Kingdom evidently attached to a continuation of the dialogue with the Committee.

26. Mr. WIMER ZAMBRANO said that Hong Kong's important economic role in Asia was clearly an important factor in the transition. It seemed that China was likely to respect the Joint Declaration as long as its provisions did not conflict with the Republic's political objectives. The ceremonial entry of Chinese troops being planned to mark the transition in 1997 symbolized the fact that Chinese sovereignty would be fully defended and exercised. He endorsed Mr. Simma's view of the situation, but suggested that one further possibility was that China would observe the rights set forth in the Covenant without actually acceding to it. He would like the delegation to describe the evolution of the political climate in which the negotiations with China had taken place.

27. Mr. CEASU noted some divergence of opinion between the United Kingdom and China concerning the interpretation and application of the Joint Declaration on two matters, namely China's intention of replacing the existing Legislative Council with a provisional legislature and the maintenance of reporting obligations under the International Covenants. He wondered whether the United Kingdom Government had considered bringing the latter issue before the Economic and Social Council or the General Assembly. An advisory opinion

might thus be requested from the International Court of Justice regarding China's obligations as a successor State under international human rights treaties.

28. Mr. GRISSA said that, according to press reports, China was already retreating from the provisions of the Joint Declaration. The Committee could not expect the delegation to speculate as to China's future actions, but what was the precise legal force of the Declaration?

29. Mrs. BONOAN-DANDAN, Country Rapporteur, said that the size of the delegation testified to the importance the United Kingdom attached to the Covenant. In Hong Kong, she had been impressed by the efficiency of the civil service and the spirit of openness which had prevailed throughout the visit. Government officials had sought to present a true picture of the situation, and she and Mr. Simma had even been shown "cage dwellings" and singleton hostels. Their dialogue with NGOs had been unrestricted, and the Government had been concerned to point out measures implemented in the light of the Committee's recommendations of 1994. She was disappointed, however, that the Government's evident awareness of the problems in Hong Kong did not appear to have been better translated into action. Although not exactly optimistic, she remained hopeful that China would continue to report on the situation in Hong Kong beyond 1997, and suggested that private, non-institutional pressure might be brought to bear on China. Despite having ratified other instruments, China had numerous reservations concerning the International Covenant on Economic, Social and Cultural Rights. The Committee also needed to discuss whether it would still invite NGO submissions on Hong Kong after 1997.

30. Mr. ADEKUOYE, complimenting the delegation on the comprehensive nature of the information submitted, recalled the time when 50 years had appeared sufficient for the economic and social circumstances of China and Hong Kong to converge. China believed such convergence to be possible. What was the delegation's position? Despite far-reaching economic and social changes, China could hardly yet be called an open society, especially since it did not observe many of the rights set forth in the Covenant. It was unrealistic to expect that China would accede to the Covenant in the short term. If the Chinese Government were to become more accountable to its own people, then some of Hong Kong's aspirations might be realized. If, however, China were at any time to consider its own sovereignty or law and order in Hong Kong to be under threat, then restrictions might conceivably be imposed on Hong Kong. How could the discrepancies between the Joint Declaration and the Basic Law be reconciled in the short and medium term?

31. Mr. AHMED said that whether or not China maintained reporting after 30 June 1997 would depend entirely upon her good will. Only China had the answer. Although he concurred with Mr. Simma's presentation, his experience as a diplomat made him wonder about the wisdom of bringing pressure to bear on China as yet, lest it should prove counterproductive. China must be given time, and rather than engaging in fruitless speculation regarding the future, it might be more valuable for the Committee to scrutinize the United Kingdom's record in Hong Kong.

32. He had twice visited Hong Kong, and had been impressed by its infrastructure which the United Kingdom would be passing on as a legacy to

China. Hong Kong had a booming economy and the world's fourth highest per capita income - higher, indeed, than that of the United Kingdom itself. Yet despite brilliant achievements in many fields, the United Kingdom's record was far from perfect. NGOs had provided details of deficiencies, such as the lack of sanitation in "temporary" dwellings - many already 20 years old - where each inhabitant was allocated a mere 3.4 square metres, or less than the standard for prison cells. According to the 1995 World Bank Development Report, as quoted by Oxfam, over 50 per cent of Hong Kong's income was concentrated in the hands of a mere 20 per cent of the population, with 10 per cent surviving on only 2.3 per cent, and 11 per cent living in absolute poverty. Government reserves amounted to over HK$ 148,570 million (approximately US$ 20 billion): why were some of those funds not being used to alleviate the poverty and housing situation, and to promote human rights?

33. The International Confederation of Free Trade Unions strongly criticized the inadequacy of Hong Kong's labour legislation, saying that it allowed dismissals and disciplinary acts against strike participants. The Christian Institute deplored the Hong Kong Government's failure to create a human rights commission. The Hong Kong administration had apparently seen fit to use brute force against illegal Vietnamese immigrants. The naturalization and two-tiered passport system was far from democratic. Despite the remarkable infrastructure in Hong Kong, the United Kingdom had evidently created an elitist society deficient in social democracy and justice.

34. Mr. SIMMA, Country Rapporteur, said that he had three further concerns, the first of which related to the question of the provisional legislature. Referring to Mr. Grissa's remarks, he pointed out that the Sino-British Joint Declaration was a binding instrument which had been registered with the United Nations. When one State party considered that the other State party was failing to meet its obligations thereunder, it was the former's responsibility to take action on the matter. In a speech made during a visit to Hong Kong in March 1996, the British Prime Minister, referring to the United Kingdom's moral responsibility towards the people of Hong Kong, as well as its specific responsibility as a signatory State, had stated that if there were any suggestion of a breach of the Joint Declaration the United Kingdom would have a duty to pursue any legal avenue. The Joint Declaration contained specific provisions describing the type of legislature that should remain in existence after the transfer of sovereignty in July 1997. In the light of the Prime Minister's statement, he failed to understand the United Kingdom's hesitance in reacting to China's proposal to replace the Legislative Council by an alternative legislative body. If such a move did not constitute a breach of the Joint Declaration, then what did?

35. His second concern was China's declared intention to amend several provisions in the Bill of Rights Ordinance, as well as other legislation relating to its implementation. As the substance of the Bill of Rights closely reflected that of the Covenant, China's proposal had serious implications, since it was tantamount to making amendments to a multilateral treaty. Lastly, he was concerned by the fact that the court of final appeal required by the Joint Declaration would not be established until after the transfer of power to the Chinese authorities in July 1997. Furthermore, contrary to earlier proposals mooted, it had now been agreed that only one foreign judge would be allowed on its bench. Did the United Kingdom

delegation consider that such a court would be in a position to guarantee the protection of human rights in the territory of Hong Kong after July 1997?

36. Mr. GRISSA said that irrespective of the binding nature of the Joint Declaration one State party could not compel the other to honour its obligations thereunder. That issue might present a problem in future, in view of China's attitude towards certain matters, as described by Mr. Simma.

37. Mrs. AHODIKPE said that although the United Kingdom and Hong Kong authorities considered the Joint Declaration to be an international agreement, it was not yet clear whether China accorded the instrument the same status or would treat it as an agreement reached under national law from which derogations would be allowed. She hoped that the delegation would be able to set the Committee's mind at rest on that issue.

38. Mr. STEEL (United Kingdom) said that he could confirm Mr. Simma's point regarding the Joint Declaration. It was a treaty that had been solemnly and willingly entered into by two Governments, thereby creating obligations under international law; he had no reason to believe that either party would disregard them. One such obligation was the submission of reports to the Committee and, as borne out by the British Prime Minister's statement, the United Kingdom would not lose interest in Hong Kong or in the observance of the Covenant on the Territory after the transfer of sovereignty. For the time being he preferred not to speculate on what action his Government might take in the case of a breach of the Joint Declaration - although, as Mr. Ceausu had observed, various recourses were available.

39. Furthermore, he did not consider it useful to give an appraisal of the current climate of negotiations between the United Kingdom and the People's Republic of China. Negotiations were under way on a whole range of issues relating to the transition and the implementation of the Joint Declaration, and they would continue well beyond 1997. It was hoped that the Chinese Government would finally accept the United Kingdom's point of view on the remaining issues and in particular those of interest to the Committee, such as reporting obligations.

40. The British Government did not regard the proposed establishment of a provisional legislature as useful or, indeed, necessary under the Joint Declaration. Moreover, the question of whether its establishment might constitute a breach of the Joint Declaration was open to debate. There was currently much uncertainty surrounding the proposals for the new legislative body and its functions. All he could say was that the Legislative Council was currently the only lawful legislature in Hong Kong and thus there was no contravention of the Joint Declaration in that respect.

41. The proposals made regarding the Bill of Rights Ordinance and other relevant legislation were currently no more than proposals. If after 30 June 1997 any measures were introduced to give effect to those proposals, it would be the responsibility of the legislature of the Hong Kong Special Administrative Region to consider them and translate them into law as necessary. On the other hand, legislation relating to the court of final appeal had already been enacted and to his knowledge there was nothing in the law that could be deemed as prejudicial to human rights.

42. Mr. FUNG (United Kingdom) said that, under the terms of the Joint Declaration, the United Kingdom and the People's Republic of China had agreed in 1984 that the Privy Council would be replaced by a court of final appeal. In 1995 the two parties had agreed on legislation to enable the court to function as of 1 July 1997. The legislation in question allowed for one overseas judge from a common law jurisdiction per case.

43. Mr. SIMMA, Country Rapporteur, asked whether members of the human rights and legal circles in Hong Kong had been disappointed at the final agreement reached concerning the court of final appeal, whereby only one foreign judge was allowed on its bench per case. He would welcome information on the tenure of judges appointed to that court. Furthermore, was it true that magistrates in Hong Kong were given two-year renewable contracts? If so, did the delegation consider such tenure to be in the interests of human rights jurisprudence? A meeting with high-ranking judges on his recent visit to Hong Kong had indicated a lack of receptiveness to human rights matters. If such attitudes prevailed before the transfer of power to the People's Republic of China, there was some cause for concern regarding the independence and stability of human rights jurisprudence in Hong Kong in the future.

44. Mr. FUNG (United Kingdom) said that the independence of the judiciary had long been regarded as one of the foundations of Hong Kong's prosperity and stability and had thus been underscored in the Joint Declaration in recognition of that fact. Judges enjoyed security of tenure in Hong Kong. Recommendations for their appointment were made to the Governor by an independent commission comprising members of the Bar, the Attorney General and lay members. After July 1997 the Commission would be renamed the Judicial Offices Recommendation Commission and would ensure greater impartiality as its decisions would be binding on the Chief Executive.

45. Under Hong Kong's common law system, magistrates were treated differently from district and high court judges since they were not, stricto senso, judges. Their term of office lasted for three years and they were normally given three such successive terms. However, the rules regarding how magistrates discharged their functions were the same as those relating to other judges.

46. In Hong Kong, human rights protection by law was taken very seriously. A large body of jurisprudence had been built up by the Hong Kong judiciary since the enactment of the Bill of Rights Ordinance in 1991 and it was informed by the jurisprudence of the courts of other common law countries, including the United States, Australia and the United Kingdom. In their courts, members of the Hong Kong judiciary had furthermore cited the decisions of other bodies outside the common law world, such as the European Court of Human Rights, and also the Human Rights Committee, in connection with communications submitted under the Optional Protocol. He was in no doubt that there was a healthy respect for the protection of human rights by law in Hong Kong, although plainly not every judge viewed human rights jurisprudence in the same way.

47. Efforts had been made of late, with fairly impressive results, to enhance human rights expertise and create greater awareness about the relevant jurisprudence. Members of the Hong Kong judiciary participated in human

rights conferences and seminars organized in Hong Kong and worldwide and were encouraged in such ventures by the Government. A specialist human rights list had been drawn up and a specialist judge appointed to deal with applications for judicial review under the Bill of Rights and with relevant litigation cases.

48. Mr. SIMMA, Country Raporteur, said that the Chief Justice of Hong Kong had been quoted by a human rights NGO to the effect that the Bill of Rights undermined the territory's legal system. Since the Chief Justice had actually admitted making the comment in a statement submitted to the executive branch of the Government, it did not bode well for the future of human rights in Hong Kong.

49. Mrs. BONOAN-DANDAN, Country Rapporteur, expressed great surprise at Mr. Fung's comments regarding programmes to enhance human rights expertise among the judiciary. From her meeting with the high-ranking member of the Hong Kong judiciary, she had formed the distinct impression that there was very little awareness of human rights issues among Hong Kong judges. She wondered how many judges used the knowledge acquired when participating in such programmes in their everyday work. Furthermore, in how many court cases had the provisions of the Covenant been cited?

50. Mr. FUNG (United Kingdom) said that he was not in a position to vouch for the views of individual judges. However, as far as the Hong Kong Government was concerned, the Bill of Rights Ordinance had been enacted to allow for the incorporation of the provisions of the Covenant in domestic law. The Ordinance also reflected the agreement made under international law - in the Joint Declaration - that provisions of the Covenant would continue to apply to Hong Kong after 30 June 1997. Moreover, the growing body of jurisprudence was proof that the Bill of Rights was very much a living law. Judges were encouraged by the Chief Justice to attend human rights seminars. All jurisdictions had recently introduced a framework for the protection of human rights by law, and the fact that some judges felt that changed the rules of the game - since it introduced a new element of measuring constitutionality - underscored the reality of the process. Not all members of the judiciary would adapt to the new situation with the same ease.

51. The Bill of Rights had generated a whole corpus of case-law that was considered with interest in common law jurisdictions overseas. Furthermore, there was a body of jurisprudence that relied on the decisions of the Human Rights Committee. Information on cases in which the Covenant had been cited could be provided in due course, as required.

52. The CHAIRPERSON invited the Committee members to pose supplementary questions concerning article 2, on the basis of the written replies of the State party and with particular reference to issues of discrimination.

53. Mr. SIMMA, Country Rapporteur, said that he wished to draw attention to three cases in which, if his facts were correct, the rights of those concerned had been gravely violated. The first case was of a woman, half ethnic Chinese, half Vietnamese, whose metal brace had stuck in her gum. Dental treatment had been refused, despite the great pain suffered by the woman and even though there had been time for her to be treated before her return to

China. In the second case, a woman with breast cancer had been told that her only hope of treatment would involve voluntary repatriation. She had been moved from one prison to another, and had suffered from the effects of tear-gas, but to date she had received no treatment. Lastly, the parents of a boy suffering from leukaemia had been told that he would receive the necessary bone marrow transplant only if they were to sign a voluntary repatriation form. The parents had insisted on unconditional treatment, which had been refused, and the boy had died. He hoped that the delegation could tell him that the stories were not true.

54. Mr. AHMED said that in 1992 one of the criteria reportedly applied by immigration officers to would-be entrants had been race; domestic helpers, especially those from the Philippines, had complained of receiving particularly bad treatment. He would like to know whether race was still a criterion for admission to Hong Kong.

55. Mr. GRISSA asked on what grounds the distinction between nationality and residence was determined and, more specifically, how a non-permanent resident could become permanent. Secondly, he noted that under the British Empire people had been freely transferred from one colony to another. He wished to know whether the rights of persons originally from other colonies would be protected after reversion to China or whether they would lose their right to stay in Hong Kong.

56. Mrs. BONOAN-DANDAN asked how far the Sex Discrimination Ordinance and the Disability Discrimination Ordinance had been implemented. Could they be invoked in court and, if so, had they actually been invoked, and in how many cases? She also wished to know the results of the studies of discrimination on grounds of sexual orientation and age, and whether the study of discrimination on racial grounds had commenced.

57. Mr. ADEKUOYE, noting that Hong Kong Chinese were underrepresented in senior government posts, said that according to his information a group of expatriates in key positions had come out in opposition to the proposed localization and had taken legal action against the Government on the ground that their rights had been infringed. How were the opposing claims reconciled and what was the position of the Hong Kong Government on the issue?

58. Mr. FUNG (United Kingdom) replied that the Government was seriously committed to localization at all levels in the interests of maximum continuity after Hong Kong's reversion to China. He could confirm that the Association of Expatriate Civil Servants had sought a judicial review of the localization process, invoking the Bill of Rights. They had been granted leave to proceed in January 1995, and in October of the same year a High Court judge had ruled against the Government on seven issues. The Association had appealed on further issues, while the Government had cross-appealed on two others.

59. On 22 November 1996 the Court of Appeal had dismissed the Government's cross-appeal, but had upheld the legality of four aspects of localization: the definition of "permanent resident" under which expatriates could become local civil servants; the deduction of the length of transferees' contracts of employment by previous extensions given to them; the "opening-up arrangement", whereby expatriates seeking to have their contracts renewed had to compete

with local civil servants; and the "succession post scheme", under which senior directorate staff of local origin were groomed to succeed to posts previously held by expatriates. Two issues had been held not to be susceptible of judicial review: the definition of "local", as applied to employment; and the Chinese language requirement for posts on pensionable terms. The seven aspects of localization policy that had been held to be unlawful were the requirement that overseas officers should take all accrued leave before becoming local officers; the restriction on promotion for transferees; the requirement for competence in Chinese for transfer under the transitional arrangements; the principle of transferring officers at a lower rank than they already held; the restriction on promotion after transferees had become local officers; the Chinese language requirement under the "opening-up arrangement"; and the promotion ceiling for overseas officers who served at overseas staff grade A and B1 ranks.

60. It was a long and complicated judgement, recently delivered, and the Government was studying it with care. The Court had recognized, however, that the Government had acted in good faith throughout and there had been no suggestion that localization itself was unlawful. The Government therefore proposed to continue the policy, which was wise in view of the impending change of sovereignty.

61. With regard to the Sex Discrimination Ordinance and the Disability Discrimination Ordinance, he wished to point out that an Equal Opportunities Commission had been set up under the terms of the Ordinances and was mandated to keep their implementation under review. The Commission investigated complaints, if possible resolving them by conciliation. If that was not possible, it helped the complainant to take the matter to court on the basis of common law. It was also drawing up codes of practice under the two Ordinances. Codes of practice relating to employment had recently been finalized after public consultation and, if endorsed by the Legislative Council, would come into effect on 20 December. The Commission was also responsible for publicity. The Ordinances were so new that he had no statistics to hand on cases in which they had been invoked, but he would gladly find out and inform the Committee.

62. As for the studies mentioned by Mrs. Bonoan-Dandan, the Government, in accordance with the views expressed by the public, would enact legislation on discrimination based on sexual orientation. It would also take administrative measures to enhance opportunities for sexual minorities. Following its consultations on age discrimination, it had decided not to proceed with legislative measures in that regard but would concentrate on a campaign of public education, publicity and self-education, starting in 1997. The situation would be reviewed after a year, at which time the need for legislation could be considered. The study of race discrimination had commenced; public hearings would start early in 1997.

63. The Government would be glad to look into the cases cited by Mr. Simma if he could provide details to enable them to be tracked down; he would then report back to the Committee. He would also reply later to the questions of Mr. Grissa and Mr. Ahmed.

64. Mr. ADEKUOYE asked whether he would be right in thinking that the Bill of Rights was only partially effective in protecting civil and political rights because it did not apply to the private sector.

65. Mr. FUNG (United Kingdom) said that the Bill of Rights had been many years in the gestation and had been drafted only after extensive studies of systems in other jurisdictions, particularly common law jurisdictions, such as Canada. As a result of comparisons with such jurisdictions and in response to the strong views held by leading human rights lawyers in the United Kingdom, it had been decided to restrict the Bill of Rights to the Government, public services and quangos. It was true that the Bill provided no protection for the infringement of an individual's rights by another individual, but the situation had been greatly improved when the decision had been made to enact legislation against discrimination on the grounds of sex or disability, which was fully binding on individuals and the private sector.

The meeting rose at 1 p.m.